

**ADOPTED REGULATION OF THE  
STATE PUBLIC WORKS BOARD**

**LCB File No. R098-11**

Effective May 30, 2012

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-5, NRS 341.070 and 341.110.

A REGULATION relating to public works; adopting provisions governing the process for selecting a construction manager at risk for public works; and providing other matters properly relating thereto.

**Section 1.** Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

**Sec. 2.** *To qualify to enter into a contract with the Division for preconstruction services and to construct a public work, a construction manager at risk must:*

- 1. Be qualified to bid on a public work of the State pursuant to NRS 338.1379; and*
- 2. Satisfy the criteria set forth in NRS 338.1691.*

**Sec. 3. 1.** *The Administrator of the Division shall advertise for proposals for a construction manager at risk by publishing a request for proposals in the manner set forth in subsection 1 of NRS 338.1692.*

*2. The request for proposals published pursuant to subsection 1 must include:*

*(a) A statement setting forth that the construction manager at risk must be qualified to bid on a public work of the State pursuant to NRS 338.1379 before submitting a proposal;*

*(b) The information set forth in paragraphs (a) to (h), inclusive, of subsection 2 of NRS 338.1692; and*

*(c) A statement that the proposed form of the contract to assist in the preconstruction of the public work and to construct the public work is available for review on the Division's website.*

**Sec. 4. 1.** *A proposal submitted in response to a request for proposals published pursuant to section 3 of this regulation must include:*

*(a) A statement of whether the applicant is qualified to bid on a public work of the State pursuant to NRS 338.1379; and*

*(b) The information required by subsection 3 of NRS 338.1692.*

**2.** *Before the merits of a proposal submitted in response to a request for proposals published pursuant to section 3 of this regulation are considered, the applicant must confirm that he or she:*

*(a) Is qualified to bid on a public work of the State pursuant to NRS 338.1379; and*

*(b) Satisfies the criteria set forth in NRS 338.1691 for qualifying to enter into a contract with the Division for preconstruction services and to construct a public work.*

**Sec. 5. 1.** *The Administrator of the Division shall appoint a ranking panel in accordance with the provisions of subsection 1 of NRS 338.1693. In the manner set forth in subsection 2 of NRS 338.1693, the ranking panel shall rank each proposal submitted by an applicant who satisfies the criteria set forth in NRS 338.1691 and section 2 of this regulation for qualifying to enter into a contract with the Division for preconstruction services and to construct a public work.*

**2.** *After a ranking panel has ranked proposals pursuant to subsection 1, the Administrator must:*

*(a) Select at least the two but not more than the five applicants whose proposals received the highest scores for interviews. If the Division did not receive at least two proposals from applicants who satisfy the criteria set forth in NRS 338.1691 and section 2 of this regulation for qualifying to enter into a contract with the Division for preconstruction services and to construct a public work, the Division may not enter into a contract with a construction manager at risk.*

*(b) Notify each applicant selected for an interview that the applicant has been selected for an interview.*

*(c) Request that each applicant selected for an interview submit to the Administrator a proposed amount of compensation for managing the preconstruction and construction of the public work. The Administrator must not disclose to the interview panel the information submitted pursuant to this paragraph until the interview panel has completed the interview process and assigned a preliminary score to each applicant.*

*(d) Appoint an interview panel consisting of at least three members, at least two of whom have experience in the construction industry, to interview the applicants. The Administrator may not appoint to the interview panel any person who was appointed to the ranking panel.*

*3. If, after ranking proposals pursuant to subsection 2 of NRS 338.1693, the ranking panel determines that fewer than two applicants satisfy the criteria set forth in NRS 338.1691 and section 2 of this regulation, the Division may not enter into a contract with a construction manager at risk.*

*4. An applicant selected for an interview pursuant to subsection 4 of NRS 338.1693 who qualifies for and wishes to receive from the interview panel the preference described in subsection 3 of NRS 338.1693 must provide to the interview panel:*

*(a) The applicant's certificate of eligibility to receive a preference in bidding on public works; and*

*(b) The affidavit for receiving a preference in bidding on public works which is prescribed by the Board.*

*5. The interview panel shall rank the proposals submitted by the applicants selected for interviews by evaluating and assigning a preliminary score to each proposal based on the factors and relative weight assigned to each factor that the Division specified in the request for proposals published pursuant to section 3 of this regulation. When ranking the interviewed applicants, the interview panel may not consider the score assigned to an applicant's proposal by the ranking panel.*

*6. After a preliminary score has been assigned to each applicant:*

*(a) The Administrator must provide to the interview panel each proposed amount of compensation for managing the preconstruction and construction of the public work which was requested pursuant to paragraph (c) of subsection 2, and the interview panel must:*

*(1) Calculate a score for the proposed amount of compensation by dividing the lowest of all the proposed amounts by the applicant's proposed amount multiplied by the total possible points available to each applicant; and*

*(2) Adjust appropriately each applicant's preliminary score to include the score calculated for the proposed amount of compensation. In adjusting each applicant's preliminary score pursuant to this subparagraph, the proposed amount of compensation must not exceed 20 percent of the final score of each applicant.*

*(b) Except as otherwise provided in this paragraph, the interview panel shall assign a relative weight of 5 percent to the possession of a certificate of eligibility to receive a*

*preference in bidding on public works, if the applicant has submitted the information required by subsection 4 and is qualified to receive the preference. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this paragraph, the provisions of this paragraph do not apply insofar as their application would preclude or reduce federal assistance for the public work. The interview panel may assign the preference described in this paragraph only after all other scoring is complete and only if the assignment of the preference will determine the outcome of the selection of the construction manager at risk.*

*7. As used in this section:*

*(a) "Interview panel" means a panel appointed by the Administrator of the Division to interview applicants who have submitted proposals pursuant to subsection 3 of NRS 338.1692 and have been selected for interviews by the public body or its authorized representative pursuant to subsection 4 of NRS 338.1693.*

*(b) "Ranking panel" means a panel appointed by the Administrator of the Division to rank proposals in accordance with the provisions of subsection 2 of NRS 338.1693.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R098-11**

The State Public Works Board adopted regulations assigned LCB File No. R098-11, which pertain to chapter 338 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

State Public Works Board solicited public comment through notices posted at State Public Works Board in Carson City and Las Vegas, the Blasdel Building, Nevada State Library, Archives in Carson City and at the Nevada County Public Libraries and mailings to our contact database.

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>
11/28/11	Workshop	12/15/11
1/10/12	Hearing	2/10/12

Many oral and nine written comments were received at the workshop and hearings. A copy of the audio taped comments or the record of the proceedings may be obtained by calling State Public Works Division at (775) 684-4141 or by writing to the State Public Works Division, 515 East Musser, Room 102, Carson City, NV 89701, or by e-mailing the SPWD at [hfatzer@admin.nv.gov](mailto:hfatzer@admin.nv.gov)

**2. The number of persons who:**

	12/15/11	2/10/12
(a) Attended each hearing:	32	15
(b) Testified at each hearing:	0	0
(c) Submitted written comments:	0	0

**3. A description of how comment was solicited from businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from the affected and interested contractor, unions and municipalities, by notices posted at State Public Works Board offices in Carson City and Las Vegas, Nevada State Library, and at the main public libraries in all the counties.

A copy of the audio taped comments or the record of the proceedings may be obtained by calling State Public Works Division at (775) 684-4141 or by writing to the State Public Works Division, 515 East Musser, Room 102, Carson City, NV 89701, or by e-mailing the SPWD at [hfatzer@admin.nv.gov](mailto:hfatzer@admin.nv.gov)

4. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Not applicable. Regulation was adopted with changes.

5. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) **Both adverse and beneficial effects; and**

Adverse - No adverse affects.

Beneficial – Provides for the process whereby SPWD selects a CMAR for State Public Works construction projects as required by Senate Bill 268.

- (b) **Both immediate and long-term effects.**

Provides for the process whereby SPWD selects a CMAR for State Public Works construction projects as required by Senate Bill 268.

6. **The estimated cost to the agency for enforcement of the adopted regulation:**

SPWB does not estimate any cost to enforce the amendments.

7. **A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

None

8. **If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

Federal Law does not require the proposed regulation.

9. **If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

Does not apply

10. **Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

Small business impact questionnaires were distributed to everyone in the qualification data base plus contractor's associations, other State Agencies and the proper postings.